

APPEAL NO. 032218
FILED OCTOBER 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 28, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is not entitled to supplemental income benefits (SIBs) for the 16th, 17th, or 19th quarters and that the claimant was not eligible to receive SIBs for the 18th quarter due to her failure to file an Application for [SIBs] (TWCC-52) with the appellant (carrier) on a timely basis; however, the claimant is entitled to SIBs for the 18th quarter because the carrier failed to provide the claimant a TWCC-52 for the 18th quarter. The carrier appealed the determination that the claimant is entitled to SIBs for the 18th quarter because the carrier failed to provide the claimant a TWCC-52 for that quarter, arguing that the failure to provide a TWCC-52 allows a tolling of the time to file the application by the claimant but does not result in a penalty to the carrier to pay benefits. The appeal file does not contain a response from the claimant. The determinations of nonentitlement for the 16th, 17th, and 19th quarters were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and rendered

The claimant testified that she received the denial of the 17th quarter of SIBs from the carrier, but never received a TWCC-52 for the 18th quarter. The hearing officer found that the carrier did not send the claimant a TWCC-52 for the 18th quarter and that the claimant did not file a TWCC-52 for that quarter with the carrier. The carrier disputes the finding that it never sent a TWCC-52 but argues that the carrier's failure to provide a TWCC-52 does not go to the issue of entitlement but rather tolls the time for the claimant to file the application. The carrier maintains that there is no support for the conclusion that a claimant is entitled to SIBs merely because a carrier does not supply a claimant with an application for the benefits.

Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.104(b) (Rule 130.104(b)), the carrier is required to send a TWCC-52 for a subsequent quarter with either the first payment for a quarter of SIBs to which the claimant is determined to be entitled or with the carrier's determination of nonentitlement for that quarter. Whether the carrier sent a TWCC-52 for the 18th quarter to the claimant was a fact question for the hearing officer to consider and she resolved this issue against the carrier. There is sufficient evidence to support this finding. At issue was whether the carrier was relieved of liability because of the claimant's failure to timely file a TWCC-52 for the 18th quarter. The hearing officer erred in determining that the claimant is entitled to SIBs for the 18th quarter because the carrier failed to provide the claimant a TWCC-52 for the 18th quarter. There is no authority in the rules for requiring the carrier to pay for any quarter of SIBs for which it did not provide a TWCC-52. In Texas Workers' Compensation

Commission Appeal No. 950723, decided June 23, 1995, the Appeals Panel stated that whether a claimant met substantive requirements for SIBs and whether a carrier is relieved of liability for SIBs because of late filing are separate issues. The hearing officer's finding that the claimant did not make a good faith effort to seek employment during the qualifying period for the 18th quarter was not appealed. Therefore, we reverse the determination that the claimant is entitled to SIBs for the 18th quarter because the carrier failed to provide the claimant a TWCC-52 for the 18th quarter and render a determination that the claimant is not entitled to SIBs for the 18th quarter.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge